

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

DATE: March 16, 2010

JUDGE
LEONARD DAVIS

COURT REPORTER
Shea Sloan

Law Clerks: Kat Li

VIRNETX, INC. vs. MICROSOFT CORPORATION	CIVIL ACTION NO: 6:07-CV-80 JURY TRIAL - DAY 7
ATTORNEYS FOR PLAINTIFF	ATTORNEYS FOR DEFENDANTS
Doug Cawley (McKool Smith) Bradley Caldwell (McKool) Luke McLeroy (McKool) Steven Callahan (McKool) Jason Cassady (McKool) Robert Parker (Parker Bunt) Edmund "Gif" Munger, Client Representative	Matthew Powers (Weil Gotshal Manges) Jared Bobrow (Weil) Elizabeth Weiswasser (Weil) Richard Sayles (Sayles Firm) Eric Findlay (Findlay Craft) Robert Lytle, Client Representative Gurdeep Pall, Microsoft

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:00 am

ADJOURN: 5:20 pm

TIME:	MINUTES:
9:00 am	Jury Deliberating.
11:05 am	Trial resumed. Court received Jury Note #3. Court read the note to the parties. Court read the Court's proposed response. Court addressed the parties as to the documents and would they care to respond. Mr. Cawley responded. Mr. Cawley addressed the Court and he referred to Plaintiff's Exhibits 401, and 120. Mr. Caldwell responded. Mr. Bobrow responded. Court re-read the note. Mr. Bobrow referred to Defendant's Exhibits #3108 3013, 3014, 3015.
	Mr. Cawley responded as to the "May" letters. Court will take a short recess and have the parties meet and confer to come to an agreement as to the exhibits.
11:20 pm	Court in recess.

DAVID J. MALAND, CLERK

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BY: *Rosa L. Ferguson*, Courtroom Deputy

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TIME:	MINUTES:
11:25 pm	Trial resumed. Court inquired if the parties have come to an agreement. Mr. Bobrow responded. Mr. Cawley responded as to May '03 and made as suggestion to the Court. Mr. Bobrow responded. Court asked to see the documents. Court reviewed the documents.
	Mr. Bobrow addressed the Court on Plaintiff's Exhibit #120 / corresponding Defendant's Exhibit # 3108. 1 st letter in the chain.
	The Court addressed the parties on the May 2, 03 and May 3 rd , referencing the chain.
11:30 am	Court received Jury Note #4 that the Jury will be taking a short break until 11:50 a.m.
	Court inquired if the parties were in agreement. Mr. Cawley responded. Mr. Bobrow responded. Court inquired if there were other documents. Parties responded.
	Court read his proposed response to Jury to Jury Note 3. Mr. Cawley responded. Mr. Bobrow objects to PX 401.
11:35 am	Court in recess. Jury deliberating.
11:50 am	Court received Jury Note #5. (Court instructed parties to be given copy of note.)
12:30 pm	Trial resumed. Court addressed the parties regarding Jury Note #5. Mr. Cawley addressed the Court and parties conferred and would like to refer Jury to the Charge. Mr. Cawley asked for specific referral to Page 10 and 11 of the charge and Page 19-24, which addresses obviousness. Mr. Bobrow disagrees and Court should direct the Jury to the charge only and not specific sections.
	Court is going to respond for the Jury to follow the charge regarding the defense of invalidity and all other issues.
12:35 pm	Court in recess. Jury deliberating.
1:00 pm	Jury Note #6 received.
1:10 pm	Trial resumed. Court advised the parties it has received Jury Note #6, and advised the parties of its content that the jury is deadlocked. Mr. Cawley requested an Allen charge. Mr. Bobrow addressed the Court and the jury should resume deliberations and attempt to come to verdict.
1:15 pm	Court read his proposed response to the parties. No objections from the parties.
1:15 pm	Court in recess. Jury deliberating.
1:25 pm	Jury Note #7 received.
1:30 pm	Trial resumed. Court advised the parties that it has received Jury Note #7. Mr. Cawley responded as to the office action and referenced 401. Mr. Bobrow responded as to Dr. Jones' testimony. Court and parties discussed Microsoft's response letter. Mr. Cawley responded. Mr. Bobrow objects to only submitting 401.
	Court read the Court's proposed response. Mr. Cawley addressed the Court. Court overruled objection.
1:33 pm	Court in recess. Jury deliberating.

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TIME:	MINUTES:
1:50 pm	Received Jury Note 8. (Clerk read to the parties re: jurors taking break and asked that parties remain in the courtroom).
4:05 pm	Received Jury Note 9. (Clerk read to the parties re: Jury requesting coffee, cokes, DP).
4:20 pm	Trial resumed. Court addressed the parties regarding sending a note to the jury asking if they have not reached a verdict by 5:00 pm suggesting that they break for the evening or if it is their wishes, to continue on to the evening and the Court will provide dinner.
4:22 pm	Court in recess. Jury deliberating.
4:30 pm	Received Jury Note 10.
4:35 pm	Court read the note to the Jury. Court inquired what the parties' position was to tender the demonstrative poster boards. Mr. Cawley has no objection. Mr. Bobrow objects. Mr. Cawley objects as well.
	Court read its proposed response. No objections from the parties.
4:38 pm	Court in recess. Jury Deliberating.
5:05 pm	Court received Jury Note #11 - Verdict reached.
	Trial resumed. Jury not present in the courtroom.
	Court addressed the parties about jury receiving a verdict. Court asked for the jury to be brought in. Jury entered the courtroom.
	Court asked for the verdict to be tendered to the Court. Court reviewed the Verdict.
	Court asked Clerk to read the Verdict. Clerk read a portion of the verdict and asked for clarification on the numbers. Court continued with the reading of the verdict. Court inquired if the jury wished to be polled. Mr. Cawley responded and did not. Mr. Bobrow asked that they be polled. Court polled the jury.
	Court addressed the Jury and thanked them for their service. Court gave the jury some further instructions as to jury service and any party contacting them.
	Court released the jury to the jury room.
	Court addressed the parties. Mr. Cawley addressed the Court application for permanent injunction.
	Mr. Bobrow responded as to a schedule on the injunction.
	Court inquired of Ms. Li (Law Clerk) if she had an order readily available. Ms. Li replied that she did not have a hard copy and read portions of the order in open court giving the parties their deadlines as follows: all post-verdict motions be filed by April 1, 2010, responses by April 15, 2010, replies by April 26, 2010, and sur-replies by May 3, 2010. The Court sets all post-verdict motions for hearing on Friday, May 7, 2010 at 9:00 a.m.
	Mr. Cawley addressed the Court on the briefing. Mr. Bobrow addressed the Court on the 14 days to get motions filed and asked about the 28 days as allowed under Rule 50 and that 28 days is the norm. Court addressed the parties and if schedule not in accordance with the Rule, Court will revise the order.

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TIME:	MINUTES:
	Court addressed the parties and commended them. Court asked that everyone remain until 5:30 pm to give the jury ample time to leave the building.
5:20 pm	There being nothing further, Court adjourned.